

FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1523411-000

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under this subpart must be signed by a principal or officer of the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by: wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order which includes the recipient's billing code for such service.

(h) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(i) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information collection requirements contained in this part (7 CFR Part 1493) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0004.

Last modified: Monday, April 14, 2008 06:13:23 PM

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Re: 46H-NH-47181, 03/19/2013

SA [REDACTED] and Financial Analyst [REDACTED]
[REDACTED] of the FBI. AUSAs [REDACTED] were provided copies of a written
summary containing the following information. In addition, AUSAs
[REDACTED] and [REDACTED] were provided copies of [REDACTED]
and the enclosed regulations from the United States Department of
Agriculture.

The FBI, [REDACTED] and USDA Office of Inspector General (USDA-OIG)
are conducting investigation involving [REDACTED]
[REDACTED]
[REDACTED]

The conduct of the
individuals and entities involves an export guarantee program operated
by the United States Department of Agriculture (USDA) Foreign
Agricultural Service (FAS). The USDA FAS operates an export credit
guarantee program designed and operated to facilitate and assist the
export of agricultural products grown and raised in the United States
and sold abroad. This program is referred to as the Export Credit
Guarantee Program and also referred to as the GSM-102 Program.

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Under the GSM-102 Program, the USDA FAS provides credit guarantees
to encourage financing of commercial exports of American agricultural
products, by, among other ways, providing competitive credit terms to
buyers of American agricultural products. The GSM-102 Program
guarantees credit extended by private banks in the United States to
approved foreign banks. The Program provides these guarantees by using
irrevocable letters of credit, denominated in U.S. Dollars, for
purchases of American agricultural products by foreign buyers. The
purpose of the Program is to facilitate the export of American
Agricultural products by providing guarantees.

Under the GSM-102 program, U.S. exporters negotiate firm sales
contracts with foreign buyers who import the products into their
countries. These foreign buyers are also referred to as the foreign
importer. To participate in Guaranty Program, the U.S. exporters apply
for guarantees through the USDA FAS and pay a fee for the guarantee.

In the event that the U.S. exporter is selected to receive a

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Guarantee, the USDA FAS will issue the guarantee to the U.S. exporter.

Thereafter, as part of the Program, the foreign importer (who has contracted to buy the American agricultural products) applies for a Letter of Credit ("LOC") through one of the foreign banks that is approved by the USDA FAS. The foreign bank, approved by the USDA FAS, then issues the LOC in favor of the U.S. exporter, who in turn ships the American agricultural commodities to the foreign importers.

The U.S. exporters then typically present the documents to the USDA FAS approved U.S. bank or financial institution. The U.S. bank or financial institution then will pay the U.S. exporters, who in exchange, assigns the Letter of Credit from the foreign bank to the U.S. bank or financial institution. The foreign bank is thus obligated pay the U.S. bank or financial institution and does so typically every six months over a 2.5 year period. The foreign importer, who was the buyer of the agricultural products, pays the foreign bank according to the terms those parties established. If the foreign bank were to default on their payments to the U.S. bank or financial institution, the U.S. bank or financial institution can then submit a claim under the USDA FAS guarantee for up to 98% of the money owed to them at that time. The U.S. bank or financial institution can only submit a claim for payment under the specific USDA FAS guarantee as each individual payment owed becomes delinquent. Meaning, the U.S. bank can not claim a total default and collect on the entire letter of credit when a scheduled payment is missed, but can claim only as each payment is due and subsequently delinquent.

During its 2009 fiscal year review of exporter performance in the GSM-102 Program, the USDA FAS GSM-102 Program had cancellation fees totaling \$4.7 million for Fiscal Year (FY) 2009. USDA FAS identified the Connecticut-based company called Southern Cross Advisors, LLC (SCA), a company controlled by the targets of this investigation, as having a high percentage of cancellations. In fact,

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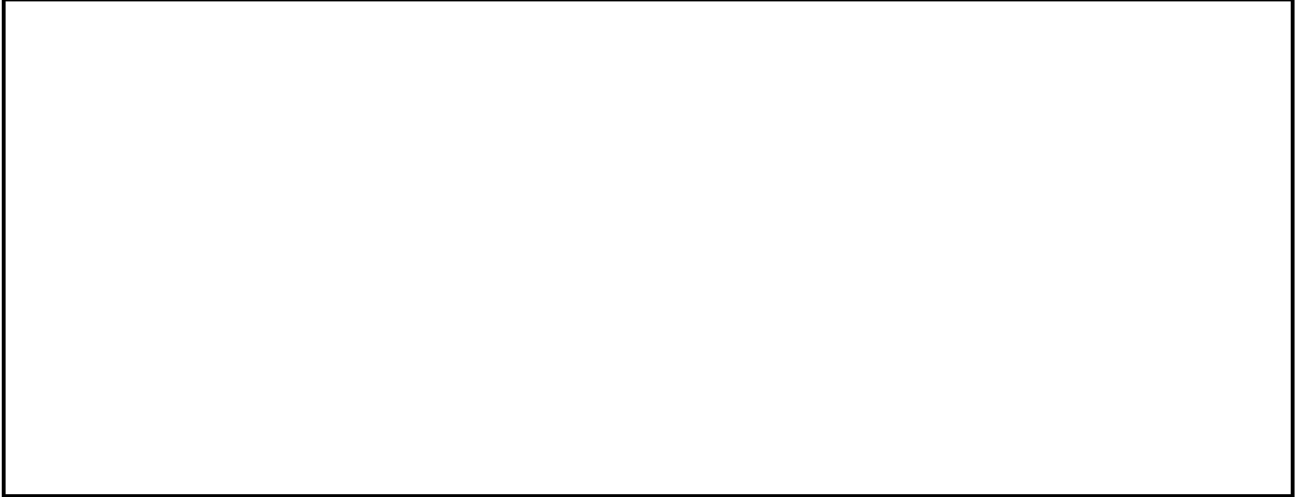
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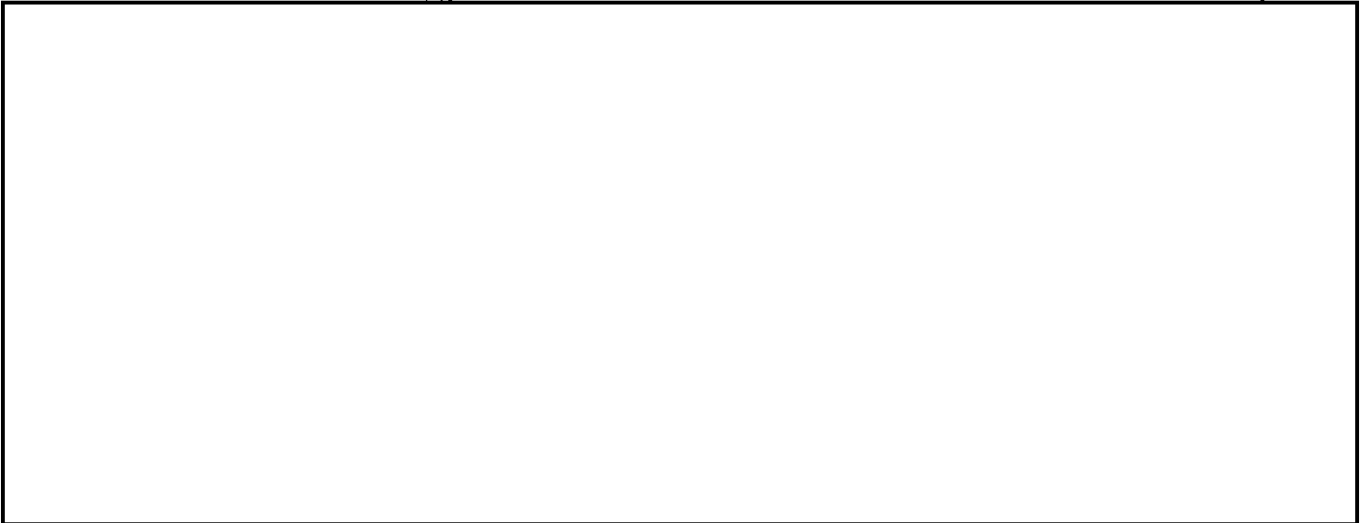
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In March 2010,



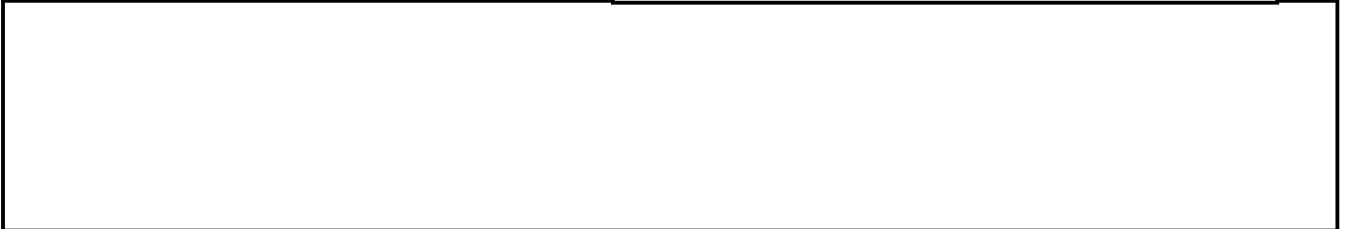
Later that same day,



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Scheme

Sometime around October 2007,



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Meanwhile the [redacted] companies obtained blocks of GSM-102 guarantees from the USDA by misrepresenting to the USDA that the respective [redacted] companies had firm export deals in place at the time for which the guarantees were being obtained.

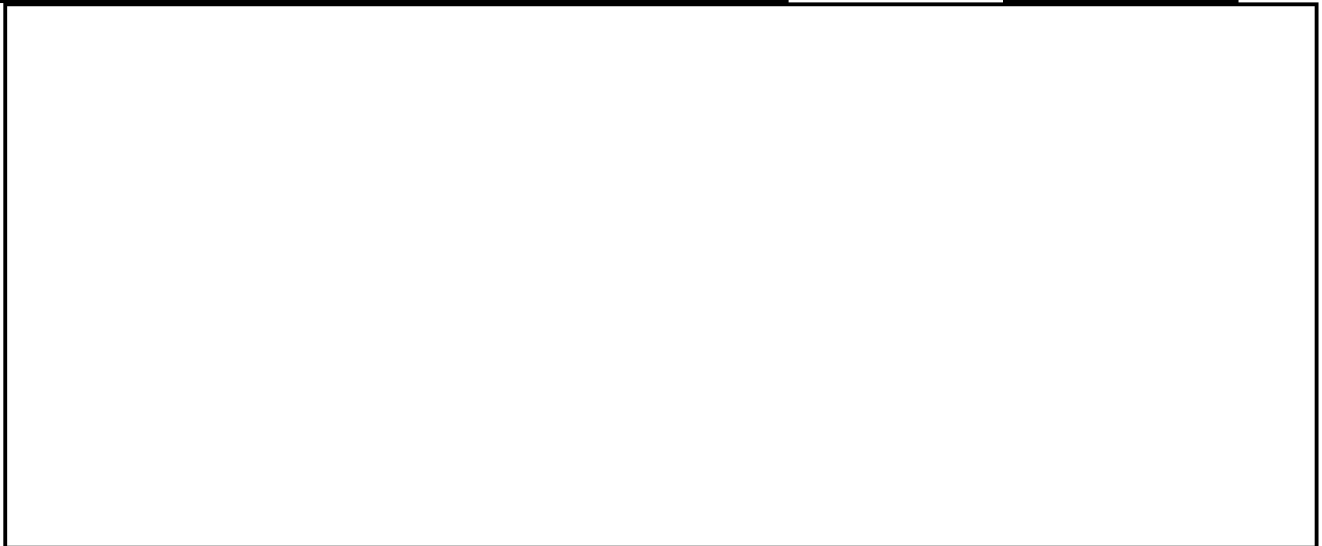
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[redacted] also established the shell company companies [redacted]
[redacted]

In addition, [redacted] recruited individual(s) to establish fictitious business entities to further perpetuate the facade of Lillemoe selling and shipping goods to businesses in Russia. In December 2007 [redacted]

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[redacted]
[redacted] On 12/16/07 [redacted]

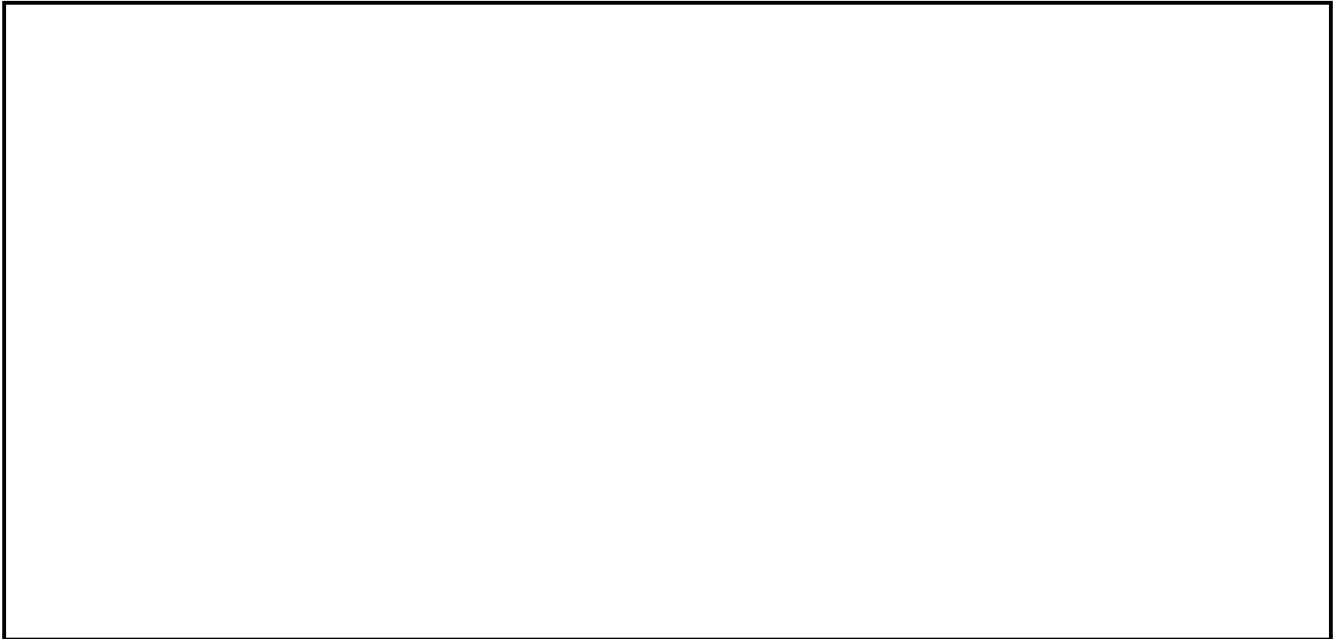


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Upon the CoBank/Deutsche Bank being presented with the aforementioned fraudulent documents, GSM-102 guarantee numbers, and a letters of credit from International Industrial Bank (IIB), the respective bank wired the value of the shipment listed on the invoice less any fees due to the bank to the account designated by [REDACTED] [REDACTED] then forwarded the funds to IIB in exchange for a fee from IIB.

According to online reporting, IIB declared defaults in a Eurobond sometime around July 2010 and proceeded a debt rescheduling agreement with the largest creditor, the Bank of Russia. In October 2010, the Central Bank of Russia suspended the banking license of IIB. The Central Bank of Russia stated, "Due to lack of liquidity, the IIB has failed to perform timely its obligations to creditors and also followed a highly risky policy." The Central Bank of Russia also alleged the IIB published false financial statements and failed to comply with the demands of regulators. As a result of IIB's apparent financial difficulties, IIB was unable to make the payments back to CoBank/Deutsche resulting in those banks submitting reimbursement claims to the USDA under the GSM-102 guarantees obtained by [REDACTED]

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The investigation conducted to date has revealed that from 2007 through 2010, the USDA has issued guarantees of approximately \$1.3 billion for transactions registered by companies owned or controlled by

[REDACTED] The guarantees were as follows:

1. Approximately \$13,404,580 of guarantees in 2007;
2. Approximately \$192,431,201 of guarantees in 2008;
3. Approximately \$867,340,045 of guarantees in 2009;
4. Approximately \$257,584,794 of guarantees in 2010

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The USDA had paid out over \$225 million in claims under the GSM-102 program for guarantees obtained by the corresponding [REDACTED] owned companies.

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On 11/24/2008, [REDACTED]

[REDACTED]

During an interview conducted by the [REDACTED]

[REDACTED]

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[REDACTED] told [REDACTED] that he was looking to get trade flows with the copies of DGM's shipping documents, which included: bills of lading; certificates of origin; and health certificates. After this initial meeting with [REDACTED] he telephoned [REDACTED] several times and expressed his interest in DGM's shipments to Russia, as well as non-Russian markets. [REDACTED] told [REDACTED] that he found DGM's contact information from a listing of trading companies with the USA Poultry and Egg Export Council (USAPAEC).

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During these discussions about getting photocopies of DGM's shipping documents, [REDACTED] offered [REDACTED] between \$2 and \$10 per ton, depending on what was being shipped. [REDACTED] told [REDACTED] that he wanted DGM's shipping documents to assist him with trade flows related to financing deals in currency with banks in Singapore. [REDACTED] explained that the currency in Singapore was

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cheap, and he wanted to use trade flows to obtain credit against the bills of lading and the other shipping documents he would buy from DGM.

[redacted] agreed with [redacted] proposal and provided him with photocopies of the requested shipping documents.

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[redacted] explained that DGM retains copies of its bills of lading, and the originals are maintained by the issuing maritime agent.

[redacted] contacted [redacted] from time to time when he became aware that DGM was arranging a shipment to Russia. A few months after meeting with [redacted] paid DGM for photocopies of its bills of lading in 2008. [redacted] contacted [redacted] and requested the photocopies of the bills of lading when a shipment was ready to go to Russia. He paid DGM between \$2 and \$10 per ton, according to the deal he had previously worked out with

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[redacted] sent this payment to DGM after he received the photocopies of the bills of lading, which was after the shipment arrived in Russia.

DGM owned the commodities that the company shipped, including the shipments where [redacted] bought photocopies of the bills of lading. In these deals, DGM always retained title to the commodities. The title to these commodities were never sold or transferred to [redacted] GTR, LLC, or any of [redacted] other companies. [redacted] simply purchased photocopies of the bills of lading. [redacted] is not aware of how [redacted] specifically used these photocopies of the bills of lading, and he emphasized that [redacted] never owned the commodities listed on them.

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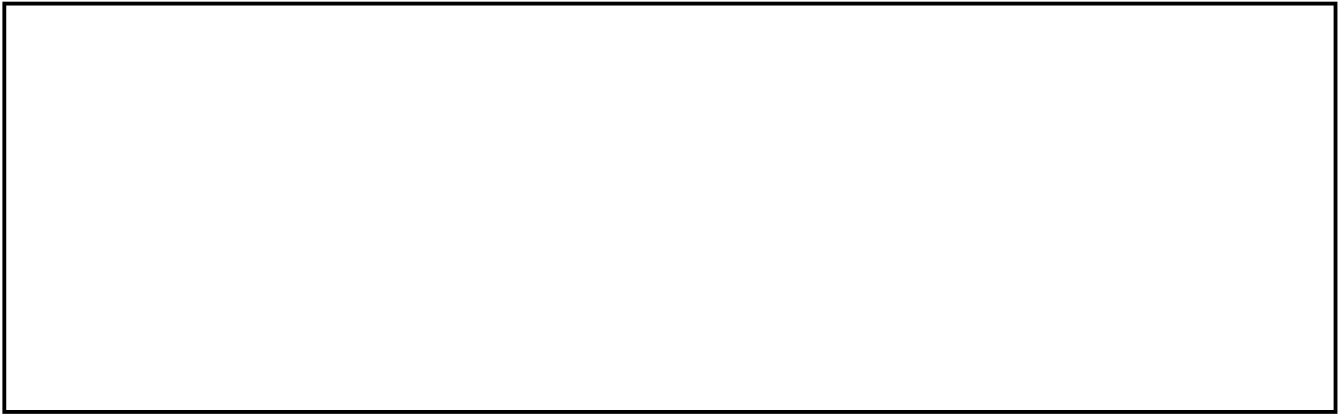
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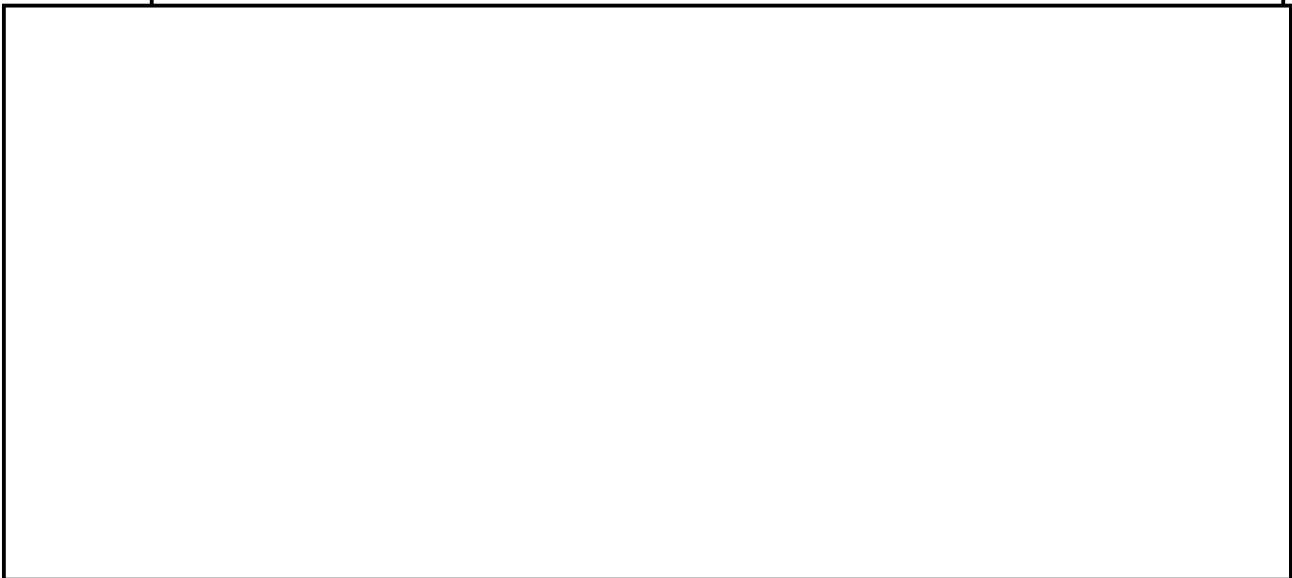
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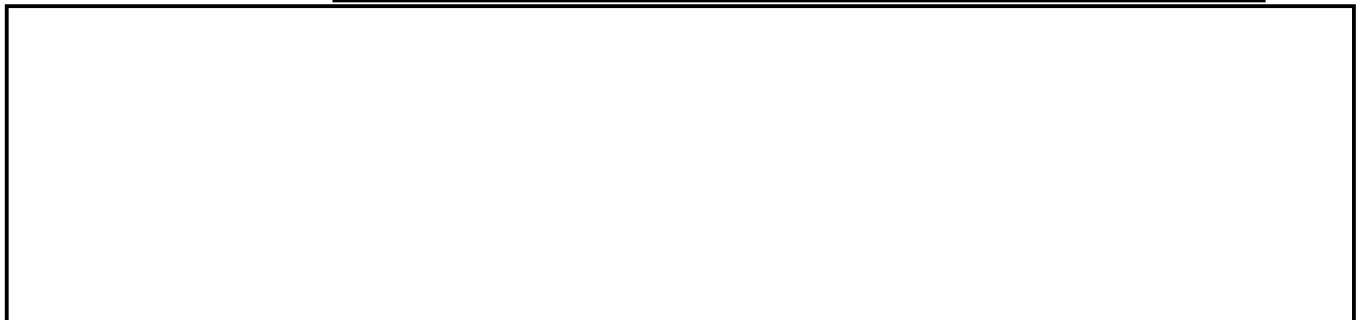
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On 11/30/2007, [redacted] representatives of PromsvyazBank in
Russia [redacted]



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On 11/30/2007, [redacted]



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[REDACTED]

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[REDACTED]

On 12/16/07, [REDACTED]

[REDACTED]

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During a lead interview conducted by FBI agents from the Minneapolis Division, [REDACTED] said he initially met [REDACTED] possibly during the 2006 time frame through a referral by a painting supply store, Abbott Paint in St. Paul, Minnesota, where [REDACTED] purchases his painting supplies. Someone at Abbott told [REDACTED] that [REDACTED] was looking for a painting contractor. [REDACTED] said at the time,

[REDACTED] in St. Paul that needed some painting. [REDACTED] contacted [REDACTED] regarding the project, which entailed painting the exterior of the building. [REDACTED] started the project but did not finish it [REDACTED]

[REDACTED] said [REDACTED] paid him for half the project, since he did not finish the project.

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[REDACTED] knew that [REDACTED] asked [REDACTED] if [REDACTED] had any contacts in Russia that might be

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interested in a business proposition. [] explained some of the details regarding this program, which included sending chicken to Russia. [] was told by [] that this opportunity involved a United States (U.S.) government subsidized program. [] explained that with these government contracts, sometimes you win the contract and sometimes you don't win the contract. [] mentioned having a

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[] advised that [] had previously [] also may have mentioned working with more []

[] remembered discussing this deal with [] toward the [] advised []

[] explained that the program is subsidized by the United States government, which makes it possible for [] to buy the chicken at a low price and sell it right away at a higher price for a profit. [] told [] that []

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[] was told that []

[] did not think that [] ever took possession of any chicken product. [] said []

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According to []

[] advised that he never expected to receive any money from this deal, nor did he ever receive any money

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from [redacted] for his assistance. [redacted] agreed to help [redacted] because at the time, [redacted]

[redacted] Therefore, [redacted] thought this may have been a possible business opportunity for him if he was eventually [redacted] However, since that time, [redacted]

[redacted]

In regards to helping [redacted]

[redacted]

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However, [redacted] did not believe that [redacted] ever solidified the deal with [redacted] LNU. About one or two years after [redacted] went to Moscow to meet [redacted] LNU, [redacted] was told by [redacted] that the deal never happened. [redacted] told [redacted] that the deal never happened and that [redacted] that they never received any money relating to this program or [redacted]

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From his conversations with [redacted] understood that [redacted] business venture was a "paper only" deal, which meant there was no chicken(s) involved. [redacted]

[redacted]

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[redacted] told [redacted] that he needed people in Russia to buy and sell the contracts, but not actually the chicken.

[redacted] told the interviewing agents that he remembers having

[redacted]

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On 9/21/2007, [redacted]

[redacted]

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On 09/27/2007, [redacted]

[redacted]

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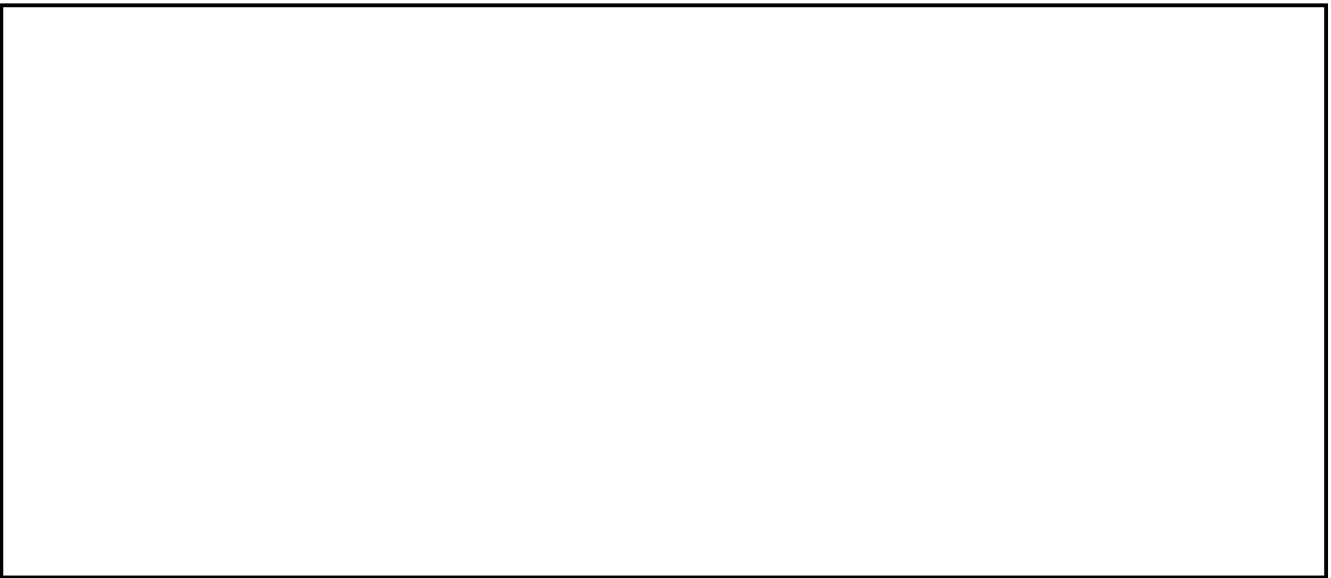
On 04/20/2008, [redacted]

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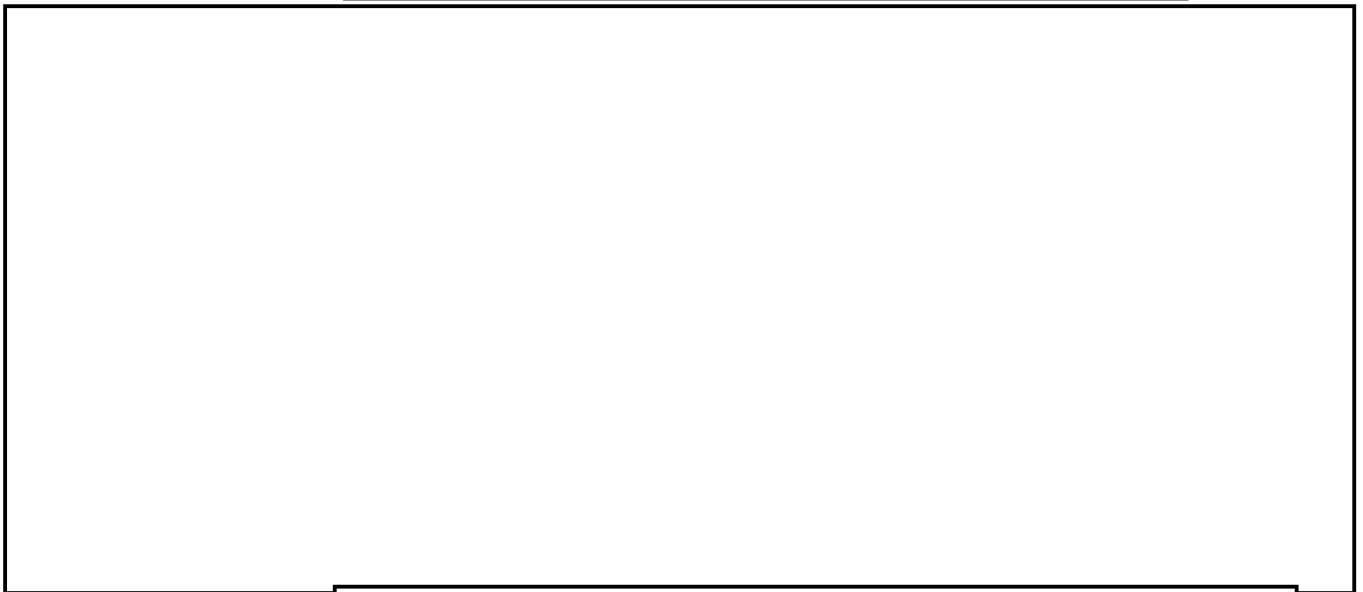
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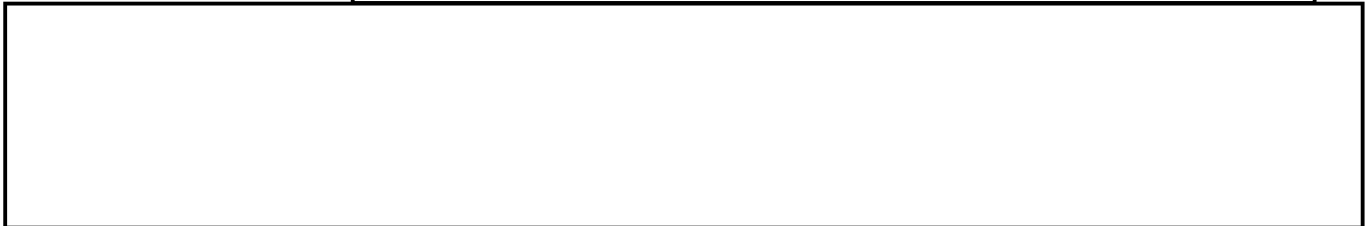
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On 03/22/2010,



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On 09/19/2008,



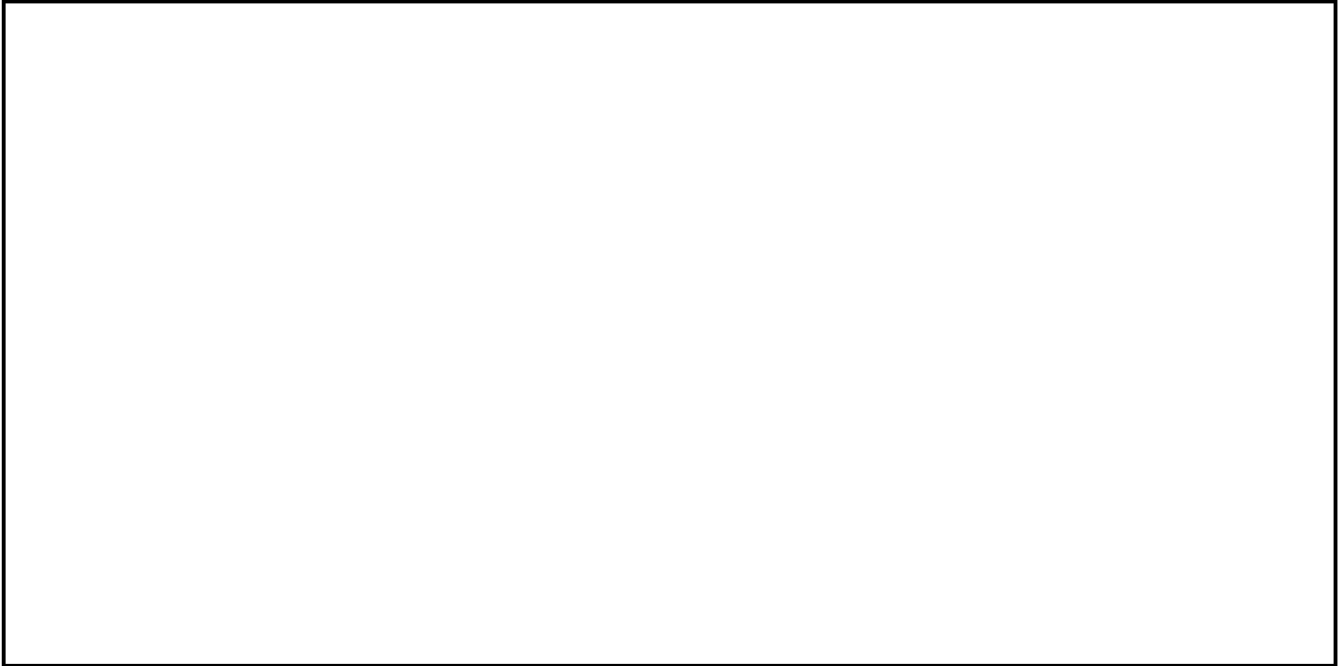
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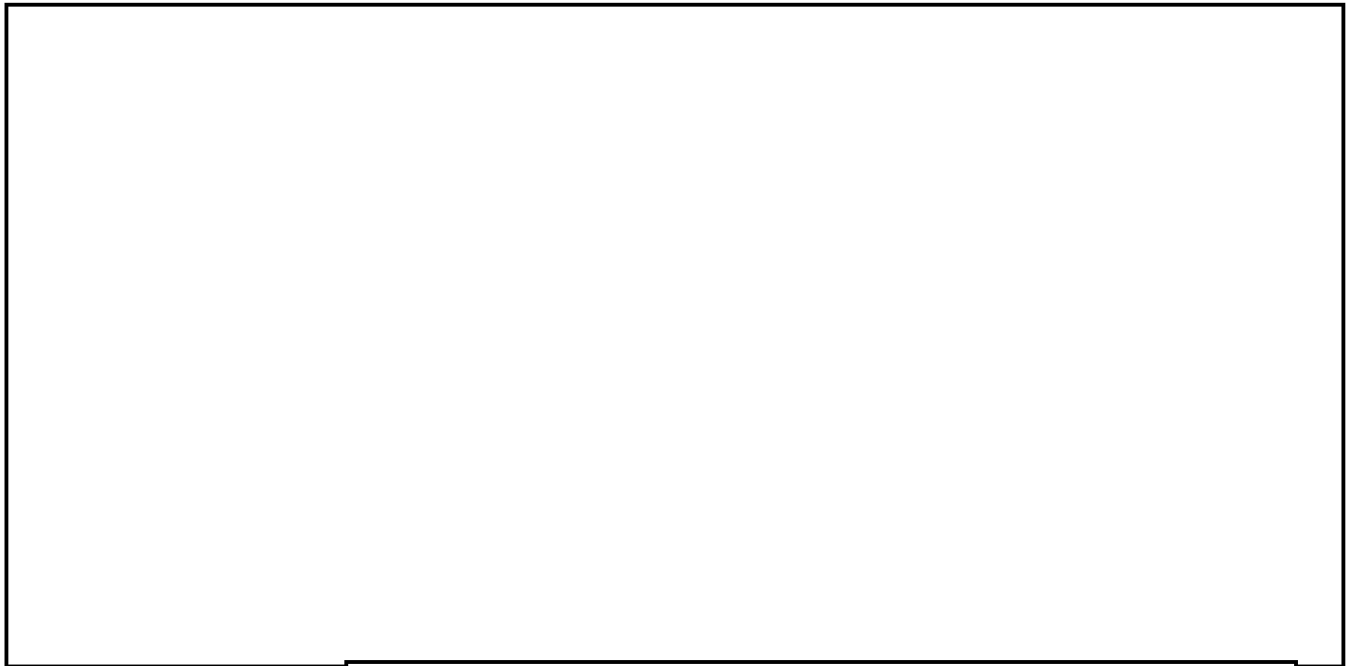
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On 04/1/2010,



On 11/17/2009,



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On 11/24/2009,



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[REDACTED]

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On 12/10/2009, [REDACTED]

[REDACTED]

In February 2012, [REDACTED] told investigators that [REDACTED]
[REDACTED] Commodities International, was approached by [REDACTED] in late
2007 or early 2008 [REDACTED]

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The communications with [REDACTED] continued throughout 2011. In those
communications, most of which were done [REDACTED]

[REDACTED]

[REDACTED] For example, if the invoice reflected
2,000 of metric tons of poultry or other produce, [REDACTED]

[REDACTED]

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[redacted] said that he wanted [redacted]

[redacted] further explained [redacted]

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Commodities International sold [redacted]

the [redacted]

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[redacted] The investigation has revealed
that [redacted] as a means of communication to effectuate the
purchases of [redacted] or instance, [redacted]

On 12/30/2009, [redacted]

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[REDACTED]

Included in the documents submitted by SCA to CoBank was a "Commercial Invoice" from SCA dated January 22, 2010 made out to the entity [REDACTED]

[REDACTED] purportedly shipped to Saint Petersburg, Russia. Also, included in the documents submitted to CoBank was a document represented to be a second "Commercial Invoice" from [REDACTED] Trading Limited dated January 22, 2010 to Axios Trading Limited of Russia in the amount of [REDACTED]

[REDACTED] purportedly shipped to Saint Petersburg, Russia. A Letter of Credit was also issued in the aforementioned amount by International Industrial Bank for the benefit of SCA on behalf of [REDACTED] [REDACTED] Trading Limited. As supporting documentation for the aforementioned invoices regarding the shipment, SCA provided six bills of lading which listed Commodities International as the shipper.

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[REDACTED]

On 12/15/2009, [REDACTED]

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[REDACTED]

On 02/01/2010, [REDACTED]

[REDACTED]

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On 05/03/2010, on behalf of [REDACTED] Deutsche Bank was provided with "Commercial Invoices" dated 04/19/2010 from Southern Cross Advisors LLC to [REDACTED]

[REDACTED] Attached to the invoices were spreadsheets titled "Annex1" listing the Bills of Lading for shipments of beef livers to Russia under [REDACTED]

[REDACTED] Beef Company. [REDACTED] was also submitted documenting the sale of the same items from [REDACTED] Trading to Axios Trading Ltd.

On 05/04/2010, [REDACTED] for [REDACTED] Trading, for the beneficiary, Southern Cross Advisors, [REDACTED]

On 05/06/2010, [REDACTED]

[REDACTED]

On 12/30/2009, [REDACTED]

[REDACTED]

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[redacted] sent CoBank documents dated 1/22/2010 on behalf of
[redacted] Included in those documents was

[redacted]

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On 1/25/2010, [redacted]

[redacted]

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On 12/30/2009, [redacted]

[redacted]

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[REDACTED]

On 12/16/2009, [REDACTED]

[REDACTED]

[REDACTED] sent CoBank documents dated 12/15/2009 and 12/16/2009 on behalf of [REDACTED]. Included in those documents were [REDACTED]

[REDACTED]

[REDACTED] Also included was a similar invoice from [REDACTED] Trading to Axios Trading, Ltd. in Russia. Also submitted was a document on [REDACTED] letterhead dated 11/20/2009 entitled

[REDACTED] the exporter [REDACTED] sold [REDACTED] [REDACTED] to Integra Finance Solutions in Kazakstan with [REDACTED] Trading Limited as the intervening purchaser. The delivery period on the document was listed as being between 11/20/2009 to 2/18/2010. The value of the shipment was listed as [REDACTED]

[REDACTED]

On 12/16/2009, [REDACTED]

[REDACTED]

On 12/31/2009, [REDACTED]

[REDACTED]

As a result of the [REDACTED]

[REDACTED]

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On 12/30/2009, [REDACTED]

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[REDACTED] sent CoBank documents dated 1/22/2010 on behalf of

[REDACTED] Included in those
documents were [REDACTED]

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On 12/30/2009 and 1/25/2010, [REDACTED]

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On 12/23/2009, [REDACTED]

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[REDACTED] sent CoBank documents dated 12/23/2009 on behalf of

[REDACTED] Included in those documents were

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On 12/23/2009, [REDACTED]

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Since 2007, [REDACTED] controlled entities have registered numerous transactions with the USDA GSM-102 Program totaling over \$1.3 billion and resulting in more than \$225 million in loss claims paid out by the

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program. For the purpose of registering for the guarantees under the GSM-102 Program, the related [REDACTED]

[REDACTED]

However, as described above, [REDACTED]

[REDACTED]

[REDACTED] Instead, as previously described above, the

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[REDACTED]

[REDACTED] The net pricing to the exporters was approximately \$9/metric ton for goods which were actually valued over \$1,000/metric ton.

The [REDACTED]

[REDACTED]

[REDACTED] Furthermore, the

[REDACTED]

[REDACTED] However, the documents were paper only transactions between the [REDACTED]

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[REDACTED]

[REDACTED] when the Russian banks defaulted on the loan repayments to the

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Title: (U) Case Summary

Re: 46H-NH-47181, 03/19/2013

U.S. banks, the U.S. banks CoBank/Deutsche Bank submitted claims totaling approximately \$225 million to the USDA under the GSM-102 guarantees assigned to them by

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Title: (U) Case Summary

Re: 46H-NH-47181, 03/19/2013

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Title: (U) Case Summary

Re: 46H-NH-47181, 03/19/2013



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UNCLASSIFIED



United States
Department of
Agriculture

Foreign
Agricultural
Service

Export Credit Guarantee Program

November 2009

The U.S. Department of Agriculture's (USDA) Export Credit Guarantee Program (GSM-102) provides credit guarantees to encourage financing of commercial exports of U.S. agricultural products, while providing competitive credit terms to buyers. By reducing financial risk to lenders, credit guarantees encourage exports to buyers in countries—mainly developing countries—that have sufficient financial strength to have foreign exchange available for scheduled payments.

The GSM-102 program guarantees credit extended by the private banking sector in the United States (or, less commonly, by the U.S. exporter) to approved foreign banks using dollar-denominated, irrevocable letters of credit for purchases of U.S. food and agricultural products by foreign buyers. USDA's Foreign Agricultural Service (FAS) administers the program on behalf of the Commodity Credit Corporation (CCC), which issues the credit guarantees. GSM-102 covers credit terms of up to three years; maximum terms may vary by country.

CCC guarantees payments due from approved foreign banks to exporters or financial institutions in the United States. However, the financing must be obtained through normal commercial sources. Typically, 98 percent of principal and a portion of interest are covered by a guarantee. Because payment is guaranteed, financial institutions in the United States can offer competitive credit terms to the foreign banks, usually with interest rates based on the London Inter Bank Offered Rate (LIBOR). Any follow-on credit arrangements between the foreign bank and the importer are negotiated separately and are not covered by the CCC guarantee. Program announcements issued by FAS provide information on specific country and commodity allocations, length of credit periods, and other program information and requirements.

Eligible Countries or Regions

Interested parties, including U.S. exporters, foreign buyers, and banks, may request that CCC establish a GSM-102 program for a country or region. Prior to announcing the availability of guarantees, CCC evaluates the ability of each country and foreign bank to service

CCC-guaranteed debt. New banks may be added, or levels of approval for others may be increased or decreased, as information becomes available.

Eligible Commodities

CCC selects agricultural commodities and products according to market potential and eligibility based on applicable legislative and regulatory requirements.

Participation

CCC must qualify exporters for participation before accepting guarantee applications. An exporter must have a business office in the United States and must not be debarred or suspended from any U.S. government program. Financial institutions must meet established criteria and be approved by CCC. CCC sets limits and advises each approved foreign bank on the maximum amount CCC will guarantee for that bank.

The exporter negotiates terms of the export credit sale with the importer. The exporter usually wishes to be paid at the time of shipment; so the exporter must work closely during negotiations with the eligible U.S. financial institution to ensure that arrangements are firmly in place for the U.S. financial institution to pay the exporter and to extend credit to the foreign bank.

Once a firm sale exists, the qualified U.S. exporter must apply for a payment guarantee before the export date. The exporter pays a fee calculated on the dollar amount guaranteed, based on a rate schedule. Fee rates are currently based on the country risk that CCC is undertaking, as well as the repayment term (tenor) and repayment frequency (annual or semi-annual) under the guarantee.

Financing

The CCC-approved foreign bank issues a dollar-denominated, irrevocable letter of credit in favor of the U.S. exporter, ordinarily advised or confirmed by the financial institution in the United States agreeing to extend credit to the foreign bank. The U.S. exporter may negotiate an arrangement to be paid as exports occur by assigning to the U.S. financial institution the right to proceeds that may become

payable under the CCC's guarantee. Under this arrangement, the exporter would also provide transaction-related documents required by the financial institution, including a copy of the export report, which must also be submitted to CCC.

Defaults/Claims

If the foreign bank fails to make any payment covered by the GSM-102 guarantee, the exporter or assignee must submit a notice of default to CCC. A claim for loss also may be filed, and CCC will pay claims found to be in good order.

For CCC audit purposes, the U.S. exporter must obtain documentation to show that the commodity arrived in the eligible country, and the exporter or the exporter's assignee must maintain all transaction documents for five years from the date of completion of all payments.

Additional Information

For more information, contact: Director, Credit Programs Division, Office of Trade programs, FAS/USDA, Stop 1025, 1400 Independence Ave. SW, Washington, DC 20250-1025; tel.: (202) 720-6211; fax: (202) 720-2495. For program participation, contact: Operations Division, Export Credits; tel.: (202) 720-6211; fax: (202) 720-2949.

Export credit guarantee program information, such as risk-based fee schedules and country ratings, and commodities eligible for coverage, is available on the FAS Web site:

<http://www.fas.usda.gov/excredits/ecgp.asp>

FAS announcements of GSM-102 allocations are posted at: <http://www.fas.usda.gov/excredits/exp-cred-guar.asp>

General information about FAS programs, resources, and services can be found at:

<http://www.fas.usda.gov>.

**REQUIRED INFORMATION FOR APPLYING
FOR GSM-102 PAYMENT GUARANTEES**

Date: [DATE OF SUBMISSION]

To: United States Department of Agriculture
Foreign Agricultural Service
Credit Programs Division
Registrations and Operations Branch
1400 Independence Avenue, SW, Stop 1025
Washington, DC 20250-1025
Fax: (202) 720-2949

Re: Application for GSM-102 payment guarantee – [NAME OF REGION] Region

Dear Sir/Madam:

We hereby apply for a GSM-102 payment guarantee with respect to the following transaction:

- 1) Name of the Destination Country
- 2) Name and address of the Importer
- 3) Name and address of the Intervening Purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country
- 4) Date of Sale
- 5) Exporter's Sale Number
- 6) Delivery/Shipment Period as agreed between the exporter and importer
- 7) Full Description of the Commodity (including packaging, if any)
- 8) Quantity, Contract Loading Tolerance, and if necessary, a request for Commodity Credit Corporation (CCC) to reserve coverage up to the maximum quantity permitted by the contract loading tolerance
- 9) Unit Sale Price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified.
- 10) Description and Value of Discounts and Allowances

- 11) Port Value (including upward loading tolerance, if any)
- 12) Guaranteed Value
- 13) Guarantee Fee
- 14) Name and Location of the Foreign Bank issuing the letter of credit
- 15) Term Length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale
- 16) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in any of the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program. The number of the agreement assigned by USDA under one of these programs should be included, as applicable.
- 17) Other information as specified in Notices to Participants, as applicable.
- 18) The exporter's statement, "**ALL SECTION 1493.50 CERTIFICATIONS ARE BEING MADE IN THIS APPLICATION**", which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in 1493.50.

NOTE: The exporter can submit their application via e-mail at gsm.registrations@fas.usda.gov, via fax at (202) 720-2949, or via the GSM system.

[Return to the FAS Home Page](#)

Subpart B-CCC Export Credit Guarantee Program (GSM-102) and CCC Intermediate Export Credit Guarantee Program (GSM-103) Operations

§ 1493.10 General statement.

(a) *Overview.*

(1) This subpart contains the regulations governing the operations of the Export Credit Guarantee Program (GSM-102) and the Intermediate Credit Guarantee Program (GSM-103). The GSM-102 and GSM-103 programs of the Commodity Credit Corporation (CCC) were developed to expand U.S. agricultural exports by making available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. Under GSM-102, credit guarantees are issued for terms of up to three years. Under GSM-103, credit guarantees are issued for terms of from three to ten years.

(2) The programs operate in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. financial institutions would be unwilling to provide financing without CCC's guarantee. The programs are operated in a manner intended not to interfere with markets for cash sales. The programs are targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by these programs is the CCC payment guarantee. The payment guarantee is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter's right to proceeds, specified amounts of principal and interest due from, but not paid by, the foreign bank issuing an irrevocable letter of credit in connection with the export sale to which CCC's guarantee coverage pertains. By approving an exporter's application for a payment guarantee, CCC encourages private sector, rather than governmental, financing and incurs a substantial portion of the risk of default by the foreign bank. CCC assumes this risk, in order to be able to operate the programs for the purposes specified in § 1493.2.

(b) *Credit facility mechanism.* Typically, in export sales of U.S. agricultural commodities, payment by the importer is made under an irrevocable letter of credit. For the purpose of the GSM-102 and GSM-103 programs, CCC will consider applications for payment guarantees only in connection with export sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made in one of the two following ways:

(1) An irrevocable foreign bank letter of credit, issued in favor of the exporter, specifically stating the deferred payment terms under which the foreign bank is obligated to make payments in U.S. dollars as such payments become due; or

(2) An irrevocable foreign bank letter of credit, issued in favor of the exporter, that is supported by a related obligation specifically stating the deferred payment terms under which the foreign bank is obligated to make payment to the exporter, or the exporter's assignee, in U.S. dollars as such payments become due. The exporter may assign the right to proceeds under the letter of credit or related obligation to a U.S. bank or other financial institution so that the exporter may realize the proceeds of the sale prior

to the deferred payment date(s) as set forth in the irrevocable foreign bank letter of credit or its related obligation. The GSM-102 and GSM-103 programs are designed to protect the exporter or the exporter's assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the foreign bank obligated under the letter of credit or related obligation.

(c) *Program administration.* The GSM-102 and GSM-103 programs will be administered pursuant to this part and any Program Announcements and Notices to Participants issued by CCC pursuant to, and not inconsistent with, this part. These programs are under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see § 1493.20(c), "Contacts P/R").

(d) *Country allocations and program announcements.* From time to time, CCC will issue a Program Announcement to announce a GSM-102 and/or GSM-103 program allocation for a specific country. The Program Announcement for a country allocation will designate specific allocations for U.S. agricultural commodities or products thereof. Exporters may negotiate export sales to buyers in that country for one of the commodities specified in the Program Announcement and seek payment guarantee coverage within the dollar amounts of specified coverage for that commodity. The Program Announcement will contain a requirement that the exporter's sales contract contain a shipping deadline within the applicable program year. The final date for a contractual shipping deadline will be stated in the Program Announcement. Program Announcements may also contain a specified "undesigned" or "unallocated" dollar amount for the purpose that if dollar amounts specified for a specific commodity for a country become fully used, an additional allocation from the "unallocated" or "undesigned" portion of the total country allocation may then be designated for a specific commodity. Program Announcements that include an "allocated" or "undesigned" dollar amount will contain further information on the "unallocated" or "undesigned" portion of the country allocation.

§ 1493.20 Definition of terms.

Terms set forth in this part, in CCC Program Announcements and Notices to Participants, and in any CCC-originated documents pertaining to the GSM-102 and GSM-103 programs will have the following meanings:

(a) *Assignee.* A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714 et seq.), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) *Contacts P/R.* A notice issued by FAS/USDA by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the GSM-102 or GSM-103 program. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

(d) *Date of export.* One of the following dates, depending upon the method of shipment: the on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the Government of the importing country.

(e) *Date of sale.* The earliest date on which a contractual obligation exists between the exporter, or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) *Discounts and allowances.* Any consideration provided directly or indirectly, by or on behalf of the exporter or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity's value, stated on the appropriate FOB, FAS, CFR or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; the whole or partial release of the importer from any financial or contractual obligations; or settlements made in favor of the importer for quality or weight.

(g) *Eligible interest.* The maximum amount of interest, based on the interest rate indicated in CCC's payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(h) *Exported value.*

(1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, is measured by the CFR or CIF value of the agricultural commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the commodity is sold on a CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the exported value.

(i) *Exporter.* A seller of U.S. agricultural commodities or products thereof that has qualified in

accordance with the provisions of § 1493.30.

(j) *FAS/USDA*. The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) *Foreign bank letter of credit*. An irrevocable commercial letter of credit, subject to the current revision of the Uniform Customs and Practices for Documentary Credits (International Chamber of Commerce Publication No. 500 , or latest revision), providing for payment in U.S. dollars against stipulated documents and issued in favor of the exporter by a CCC-approved foreign banking institution.

(l) *GSM*. The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(m) *GSM-102*. A CCC program, also referred to as the "Export Credit Guarantee Program", under which payment guarantees are approved for a credit period not exceeding 3 years from the date(s) of export or from the date interest begins to accrue, whichever is earlier.

(n) *GSM-103*. A CCC program, also referred to as the "Intermediate Export Credit Guarantee Program", under which payment guarantees are approved for a credit period no less than 3 years but not exceeding 10 years from the date(s) of export or from the date interest begins to accrue, whichever is earlier.

(o) *Guaranteed value*. The maximum amount, exclusive of interest, that CCC agrees to pay the exporter or assignee under CCC's payment guarantee, as indicated on the face of the payment guarantee.

(p) *Importer*. A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(q) *Incoterms*. The following customary terms, as defined by the International Chamber of Commerce, Incoterms (current revision):

(1) Free Alongside Ship (FAS),

(2) Free on Board (FOB),

(3) Cost and Freight (CFR, or alternatively, C&F, C and F, or CNF), and

(4) Cost Insurance and Freight (CIF).

(r) *Intervening purchaser*. A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(s) *Late interest*. Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after receipt of a claim which CCC has determined to be in good order and ending on the day on which payment is made on such claim for loss.

(t) *Payment guarantee*. An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee, this subpart, and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter's assignee in the event of a default by a foreign bank on its payment

obligation under the foreign bank letter of credit issued in connection with a guaranteed sale or under the foreign bank's related obligation.

(u) *Notice to participants.* A notice issued by CCC by public press release which serves one or more of the following functions: to remind participants of the requirements of the program; to clarify the program requirements contained in these regulations in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations, before the exporter's application for such payment guarantee is approved.

(v) *Port value.*

(1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, U.S. point of export, the value, FAS or FOB basis, U.S. point of export, of the export sale, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward tolerance, if any, as provided by the export sales contract, is measured by the CFR or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis and where the commodity was sold on CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the port value.

(w) *Program announcement.* An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, and include other information and requirements.

(x) *Related obligation.* A contractual commitment by the foreign bank issuing the letter of credit in connection with an export sale to make payment(s) on principal amount(s), plus any contractual interest, in U.S. dollars, to a financial institution in the United States on deferred payment terms consistent with those permitted under CCC's credit guarantee programs. The U.S. financial institution is entitled to such payments because it has financed the obligation arising under such letter of credit.

(y) *United States or U.S.* All of the 50 states, the District of Columbia, and the territories and possessions of the United States.

(z) *U.S. agricultural commodity.*

(1) An agricultural commodity or product entirely produced in the United States; or

(2) A product of an agricultural commodity--

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(ii) That the Secretary determines to be a high value agricultural product. For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

(aa) *USDA.* United States Department of Agriculture.

§ 1493.30 Information required for program participation.

Before CCC will accept an application for a payment guarantee under either the GSM-102 program or the GSM-103 program, the applicant must qualify for participation in these programs. Based upon the information submitted by the applicant and other publicly available sources, CCC will determine whether the applicant is eligible for participation in the programs.

(a) *Submission of documentation.* In order to qualify for participation in the GSM-102 and GSM-103 programs, an applicant must submit to CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant's headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular GSM-102 or GSM-103 export sale contemplated by the applicant;

(5) A certified statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(6) A certification that: "I certify, to the best of my knowledge and belief, that neither [name of applicant] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency. ["Principals," for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division, or business

segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of applicant] will immediately notify CCC."

(b) *Previous qualification.* Any exporter that has previously qualified under this section may submit applications for GSM-102 or GSM-103 payment guarantees. Each application must include the statement required by § 1493.40(a)(18) incorporating the certifications of § 1493.50, including the certification in § 1493.50(e) that the information previously provided pursuant to paragraph (a) of this section has not changed. If the exporter is unable to provide such certification, such exporter must update the information required by paragraph (a) of this section which has changed and certify that the remainder of the information previously provided has not changed.

(c) *Additional submissions.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by CCC.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the GSM-102 or GSM-103 programs if:

- (1) Such applicant is currently debarred, suspended, or proposed for debarment from contracting with or participating in any program administered by a U.S. Government agency; or
- (2) Such applicant is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred, suspended or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency.

§ 1493.40 Application for payment guarantee.

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

- (1) Name of the destination country.
- (2) Name and address of the importer.
- (3) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country.
- (4) Date of sale.
- (5) Exporter's sale number.
- (6) Delivery period as agreed between the exporter and the importer.
- (7) A full description of the commodity (including packaging, if any).
- (8) Mean quantity, contract loading tolerance and, if necessary, a request for CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance.

(9) Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified.

(10) Description and value of discounts and allowances, if any.

(11) Port value (includes upward loading tolerance, if any).

(12) Guaranteed value.

(13) Guarantee fee.

(14) Name and location of the foreign bank issuing the letter of credit.

(15) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale.

(16) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in any of the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program. The number of the Agreement assigned by USDA under one of these programs should be included, as applicable.

(17) Other information as specified in Notice to Participants, as applicable.

(18) The exporter's statement, "ALL SECTION 1493.50 CERTIFICATIONS ARE BEING MADE IN THIS APPLICATION" which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.50.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. In the event that the application is approved, the GSM will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in § 1493.60(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

§ 1493.50 Certification requirements for obtaining payment guarantee.

By providing the statement in § 1493.40(a)(18), the exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.40(a)(18), certifies that:

(a) The agricultural commodity or product to be exported under the payment guarantee is a U. S. agricultural commodity as defined by Sec. 1493.20(z);

(b) There have not been and will not be any corrupt payments or extra sales services or other items

extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law;

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee, and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business; and

(e) The information provided pursuant to § 1493.30 has not changed, the exporter still meets all of the qualification requirements of § 1493.30, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements. If the exporter breaches or violates these certifications with respect to a GSM-102 or GSM-103 payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

§ 1493.60 Payment guarantee.

(a) *CCC's obligation.* The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the foreign bank fails to pay under the foreign bank letter of credit or the related obligation. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* The payment guarantee will apply to the period beginning either on the date(s) of export(s) or on the date when interest begins to accrue, whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter's application for a payment guarantee.

(c) *Terms of the CCC payment guarantee.* The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and/or Notices to Participants in effect at the time the payment guarantee is approved by CCC.

(d) *Final date to export.* The final date to export shown on the payment guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) *Reserve coverage for loading tolerances.* The exporter may apply for a payment guarantee and, if coverage is available, pay the guarantee fee, based at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (i.e., lower loading tolerance), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying the additional

amount of fee applicable. If such amendment to the payment guarantee is not filed with CCC by the exporter within 30 days after the date of the last export against the sales contract, CCC may determine not to reserve the coverage originally set aside for the exporter.

(f) *Ineligible exports.* Commodities with a date of export prior to the date of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for GSM-102 or GSM-103 guarantee coverage, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) *Foreign agricultural component.* CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in § 1493.20(z). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

(h) *Additional requirements.* The payment guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(i) *Amendments.* A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period and an extension of time to export. Any amendment to the payment guarantee, particularly those that result in an increase in CCC's liability under the payment guarantee, may result in an increase in the guarantee fee. (Technical corrections or corrections of a clerical error which may be submitted by the exporter or the exporter's assignee are not viewed as amendments.)

§ 1493.70 Guarantee rates and fees.

(a) *Guarantee fee rates.* The payment guarantee fee rates will be based upon the length of the payment terms provided for in the export sale contract, the degree of risk that CCC assumes, as determined by CCC, and any other factors which CCC determines appropriate for consideration. A current schedule of the guarantee fee rates charged by CCC under GSM-102 and GSM-103 will be available upon request from the FAS/USDA office specified in the Contacts P/R.

(b) *Calculation of fee.* The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) *Payment of fee.* The exporter shall remit, with his written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter's check for the guarantee fee shall be made payable to CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) *Refunds of fee.* Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC's approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such refund will be in the best interest of CCC. If the application for a payment guarantee is not approved or is approved only for a part of the guarantee coverage requested, a full or pro rata refund of the fee remittance will be made.

§ 1493.80 Evidence of export.

(a) *Report of export.* The exporter is required to provide CCC an evidence of export report for each shipment made under the payment guarantee. This report must include the following:

- (1) Payment guarantee number
- (2) Date of export
- (3) Exporter's sale number
- (4) Exported value
- (5) Quantity
- (6) A full description of the commodity exported
- (7) Unit sales price received for the commodity exported and the basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter's application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference.
- (8) Description and value of discounts and allowances, if any.
- (9) Number of the Agreement assigned by USDA under another program if any portion of the export sale was also approved for participation in the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program.
- (10) The exporter's statement, "ALL SECTION 1493.90 CERTIFICATIONS ARE BEING MADE IN THIS EVIDENCE OF EXPORT" which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.90.

(b) *Time limit for submission of evidence of export.* The exporter must provide a written report to the office specified in the Contacts P/R within 60 calendar days if the export was by rail or truck; or 30 calendar days if the export was by any other carrier. The time period for filing a report of export will commence upon each date of export of the commodity covered under a payment guarantee. If the evidence of export report is not received by CCC within the time period for filing, the payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would be likely to result, in:

- (1) Significant financial harm to CCC;
- (2) The undermining of an essential regulatory purpose of the program;
- (3) Obstruction of the fair administration of the program; or
- (4) A threat to the integrity of the program. The time limit for submission of an evidence of export report may be extended if such extension is determined by the GSM to be in the best interests of CCC.

(c) *Export sales reporting.* Exporters may have a mandatory reporting responsibility under Section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712), as amended by Section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 for exports of wheat and wheat flour, feed grains, oilseeds, cotton, and other agricultural commodities and products thereof.

§ 1493.90 Certification requirements for the evidence of export.

By providing the statement contained in § 1493.80(a)(10), the exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the exporter breaches or violates these certifications with respect to a GSM-102 or GSM-103 payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in § 1493.80(a)(10), certifies that:

- (a) The agricultural commodity or product exported under the payment guarantee is a U. S. agricultural commodity as defined by Sec. 1493.20(z);
- (b) Agricultural commodities of the grade, quality and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee;
- (c) A letter of credit has been opened in favor of the exporter by the foreign bank shown in the payment guarantee to cover the port value of the commodity exported;
- (d) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law; and
- (e) The information provided pursuant to § 1493.30 has not changed, the exporter still meets all of the qualification requirements of § 1493.30 and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

§ 1493.100 Proof of entry.

- (a) *Diversion.* The diversion of commodities covered by a GSM-102 or GSM-103 payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.
- (b) *Records of proof of entry.* Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the agricultural commodities exported in connection with the GSM-102 or GSM-103 programs in the country that was the intended country of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the GSM showing:

- (1) That the agricultural commodity entered the importing country;
- (2) The identification of the export carrier;
- (3) The quantity of the agricultural commodity;
- (4) The kind, type, grade and/or class of the agricultural commodity; and
- (5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country.
[Records of proof of entry need not be submitted with a claim for loss, except as may be provided in § 1493.110(b)(4)(ii).]

§ 1493.110 Notice of default and claims for loss.

(a) *Notice of default.* If the foreign bank issuing the letter of credit fails to make payment pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the foreign bank (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:

- (1) Payment guarantee number;
- (2) Name of the country;
- (3) Name of the defaulting bank;
- (4) Due date;
- (5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;
- (6) Date of foreign bank's refusal to pay, if applicable; and
- (7) Reason for foreign bank's refusal to pay, if known.

(b) *Filing a claim for loss.* A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

- (1) Payment guarantee number;
- (2) A certification that the scheduled payment has not been received;
- (3) A certification of the amount of accrued interest in default, the date interest began to accrue, and the

interest rate on the foreign bank obligation applicable to the claim;

(4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:

- (i) (A) The foreign bank letter of credit securing the export sale; and
 (B) If applicable, the document(s) evidencing the related obligation owed by the foreign bank to the assignee financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter. Such related obligation must be demonstrated in one of the following ways:
 - (1) The related obligation, including a specific promise to pay on deferred payment terms, may be contained in the letter of credit as a special instruction from the issuing bank directly to the U.S. financial institution to refinance the amounts paid by the U.S. financial institution for obligations financed according to the tenor of the letter of credit; or
 - (2) The related obligation may be memorialized in a separate document(s) specifically identified and referred to in the letter of credit as the agreement under which the foreign bank is obliged to repay the U.S. financial institution on deferred payment terms; or
 - (3) The letter of credit payment obligations may be specifically identified in a separate document(s) setting forth the related obligation, or in a duly executed amendment thereto, as having been financed by the U.S. financial institution pursuant to, and subject to repayment in accordance with the terms of, such related obligation; or
 - (4) The related obligation may be memorialized in the form of a promissory note executed by the foreign bank issuing the letter of credit in favor of the U.S. financial institution submitting the claim;
- (ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country;
- (iii) (A) The exporter's invoice showing, as applicable, the FAS, FOB, CFR or CIF values; or
 (B) If there was an intervening purchaser, both the exporter's invoice to the intervening purchaser and the intervening purchaser's invoice to the importer;
- (iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable foreign bank letter of credit and the related obligation, if applicable; and
- (v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to § 1493.80(a).

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the exporter or an exporter's assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the foreign bank to make scheduled installments on the same export shipment, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (b)(1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and including the date the original claim was filed with CCC.

§ 1493.120 Payment for loss.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.110, CCC will determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee, this subpart and any applicable supplemental Program

Announcements and Notices to Participants. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* CCC's maximum liability for any claims for loss submitted with respect to any payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

- (1) The guaranteed value as stated in the payment guarantee, plus eligible interest; or
- (2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest.

(c) *Late interest payment.* If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the day of receipt of a claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the best interests of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge, provided that:

- (1) The exporter complies with the reporting requirements under § 1493.80 and § 1493.90, excluding post-export adjustments (i.e., corrections to evidence of export reports); and
- (2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.110.

§ 1493.130 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the foreign bank of CCC's rights under the subrogation agreement to recover all moneys in default.

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer, the foreign bank, or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC.

This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer or the foreign bank, and recoveries received by CCC from the exporter, the exporter's assignee, or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a GSM-102 or GSM-103 payment guarantee, CCC pro rates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to § 1493.130-Illustration of Pro Rata Allocation of Recoveries-provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or for fulfilling obligations under GSM-102 or GSM-103. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The violation by an exporter of the certifications in § 1493.50(b) and § 1493.90(d) or the failure of an exporter to comply with the provisions of § 1493.100 or § 1493.140(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the foreign bank and/or the importer.

Appendix A to § 1493.130-Illustration of Pro Rata Allocation of Recoveries

The following example illustrates CCC's policy, as set forth in § 1493.130(c), regarding pro rata sharing of recoveries made for claims filed under the GSM-102 and GSM-103 programs. A typical case might be as follows:

1. The U.S. bank enters into a \$300,000 three-year credit arrangement with the foreign bank calling for equal annual payments of principal and annual payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum on overdue amounts until the overdue amount is paid.
2. The foreign bank fails to make the final principal payment of \$100,000 and an interest payment of \$10,000, both due on January 31.
3. On February 10, the U.S. bank files a claim in good order with CCC.
4. CCC's guarantee states that CCC's maximum liability is limited to 98 percent of the principal amount due (\$98,000) and interest at a rate of 8 percent per annum (basis 365 days) on 98 percent of the principal (\$7,840).
5. CCC pays the claim on February 22.
6. The latest bond equivalent rate of the 52-week Treasury bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment (January 31) is 9 percent. The latest investment rate of the 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (February 11) is 7 percent.

Computation of Obligations

Using the above case, CCC's payment to the holder of the payment guarantee would be computed as follows:

1. CCC's Obligation under the Payment Guarantee:

(a)	Principal coverage - (98% \$100,000)	\$98,000.00
(b)	Interest Coverage - (8% \$98,000)	\$7,840.00
		\$105,840.00
(c)	Late interest due from CCC (7% per annum for 11 days (\$105,840))	\$223.28
(d)	Amount paid by CCC on February 22	\$106,063.28

2. Foreign bank's Obligation under the Letter of Credit or the Related Obligation:

(a)	Principal due January 31	\$100,000.00
	Interest due January 31 (10% x \$100,000)	\$10,000.00
	Amount owed by foreign bank as of January 31	\$110,000.00
(b)	Penalty interest due (12% per annum for 22 days \$100,000)	\$795.62
(c)	Amount owned by foreign bank as of February 22	\$110,795.62

3. Amount of Foreign Bank's Obligation Not Covered by CCC's Payment Guarantee: \$4,668.55

Computation of Pro Rata Sharing in Recovery of Losses

In establishing each party's respective interest in any recovery of losses, the total amount due under the foreign bank obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the foreign bank is \$110,000, CCC would be entitled to 95.75 percent (\$106,063.07 divided by \$110,765.62) and the holder of the payment guarantee would be entitled to 4.21 percent (\$4,668.55 divided by \$110,795.62) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim has been paid by CCC, § 1493.130(b) would apply.

§ 1493.140 Miscellaneous provisions.

(a) Assignment.

(1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

- (i) Made to one party acting for two or more parties or
- (ii) Subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof, to the financial institution and to the exporter issued the payment guarantee, in lieu of an acknowledgment of assignment. (4) The name and address of the assignee must be included on the written notice of assignment.

(b) Ineligibility of financial institutions to receive an assignment. A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

- (1) Is not in sound financial condition, as determined by the Treasurer of CCC; or
- (2) Is the financial institution issuing the letter of credit or branch, agency, or subsidiary of such institution; or
- (3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or
- (4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(c) Ineligibility of financial institutions to receive proceeds. A financial institution will be ineligible to receive proceeds payable under a payment guarantee approved by CCC if such financial institution:

- (1) At the time of assignment of a payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;
- (2) Is the financial institution issuing the letter of credit or a branch, agency, or subsidiary of such institution; or
- (3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or
- (4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(d) *Alternative satisfaction of payment guarantees.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the payment guarantee has been assigned, with the agreement of the exporter's assignee), establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of records and access to premises.* (1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a GSM-102 or GSM-103 payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by § 1493.100(b), and must provide access to such documentation if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of program participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants relating to the GSM-102 or GSM-103 program, as applicable. Applicants for payment guarantees under these programs are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

(g) *Submission of documents by principal officers.* All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments), by exporters or exporters' assignees

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NH-7

Contact:**Approved By:****Drafted By:****Case ID #:** 46H-NH-47181

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Synopsis: (U) Provide case summary and update.**Full Investigation Initiated:** 03/09/2011**Enclosure(s):** Enclosed are the following items:

1. (U)
2. (U) USDA GSM-102 regulations

Details:

On 03/15/2013, AUSAs were briefed regarding the captioned matter by SA of the FBI,

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